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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sports Source, Inc.

Serial No. 76351038

Edward A. Sokolski for Sports Source, Inc.

Brett Tolpin, Trademark Examining Attorney, Law Office 115
(Tomas Vlcek, Managing Attorney).

Before Simms, Seeherman and Quinn, Administrative Trademark
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Sports Source, Inc. has appealed from the final
refusal of the Trademark Examining Attorney to register SSI
SPORTS, with the word SPORTS disclaimed, as a trademark for
"backpacks, day packs, fanny packs, luggage, suitcases, and
beach umbrellas" in Class 18, "foldable beach chairs and
directors chairs" in Class 20, and "soft sided coolers,
hard sided coolers, lunch boxes and lunch pails" in Class

21.¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark SSI, previously registered for "air beds",² that, if applied to the identified goods, it is likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed appeal briefs; applicant did not request an oral hearing.

Before turning to the substantive issue on appeal, we must address an objection by the Examining Attorney. The Examining Attorney objects to our consideration of lists of registrations and application abstracts which were obtained from the USPTO's TESS database, and which applicant submitted during the course of prosecution of the application. The lists consist of the mark, the serial number and, if registered, the registration number, and whether the application or registration is "live" or "dead." The Examining Attorney contends that these third-party registrations were not properly made of record because applicant did not submit copies of the registrations. The Examining Attorney is correct that,

¹ Application Serial No. 76351038, filed December 21, 2001, and asserting a bona fide intention to use the mark in commerce.

² Registration No. 1051886, issued November 2, 1976; Section 8 and 15 affidavits accepted and acknowledged; renewed.

normally, a list of registrations is insufficient to make them of record. See *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). However, in this case, as the present Examining Attorney acknowledged, the previous Examining Attorney did not object to applicant's submissions as being improper at the time they were submitted, and at a point that applicant could have cured the evidentiary problem.³ Accordingly, the registrations/applications are deemed to be stipulated into the record. See TBMP §1208.02. However, since the lists do not provide any information about the goods or services for which the marks are registered, their probative value is very limited.

This brings us to the issue of likelihood of confusion. Our determination of this issue is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between

³ It is further noted that the present Examining Attorney, in denying applicant's request for reconsideration, did not take the opportunity to advise applicant of any problem with submitting a mere list of registrations.

the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The marks themselves are virtually identical. Applicant has essentially taken the cited mark, SSI, and added the descriptive word SPORTS to it. It is the general rule that one may not appropriate the entire mark of another and avoid a likelihood of confusion by the addition thereto of descriptive or otherwise subordinate matter. *Bellbrook Dairies, Inc. v. Hawthorn-Mellody Farms Dairy, Inc.*, 253 F.2d 431, 117 USPQ 213 (CCPA 1958). Although marks must be compared in their entireties, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). In the present case, SSI is the dominant feature of applicant's mark. Consumers may notice the word SPORTS, but they will regard it as merely a descriptor of the goods, and will view SSI as the origin-indicating portion of applicant's mark.

Moreover, we do not agree with applicant's contention that the registered mark is entitled to a very limited

scope of protection. Applicant relies on a listing taken from the USPTO's TESS database showing that there are 140 applications or registrations for SSI marks. Third-party registrations are not evidence of use of the marks shown therein. Thus, we cannot say that the public is so familiar with SSI marks that they will assume that related goods sold under the mark SSI emanate from separate sources. Third-party registrations can, of course, be used to show that a term has a certain significance in a particular industry, and therefore that the term is not entitled to a broad scope of protection. However, the listing provided by applicant does not show this, either. Almost half of the list is for applications, not registrations. Applications show only that a particular mark has been applied for; they do not show, as registrations do, that a term has a particular significance within an industry. More importantly, the list of "live" third-party registrations does not contain any information as to the goods or services, or even classes, for which the marks are registered. Thus, applicant has produced no evidence that SSI has a particular meaning or significance for goods such as those of the cited registrant's.⁴

⁴ It is likely that the SSI marks refer to the names of the

We turn next to a consideration of the goods. As has been often stated, it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). Moreover, the greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the applicant's goods or services and the registrant's goods or services that is required to support a finding of likelihood of confusion. In re Opus One Inc., 60 USPQ2d 1812 (TTAB 2001).

various registrants, rather than suggesting a characteristic of the goods or services for which they are registered. In this connection, we note that applicant's name is "Sports Source, Inc." and the cited registrant's name is "Support Systems International, Inc."

In order to demonstrate the requisite relatedness of the goods, the Examining Attorney has made of record a number of third-party registrations. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Several comments must be made about the registrations submitted by the Examining Attorney. First, the Examining Attorney states that an X-Search search summary "identifies two-hundred and ten (210) registrations or applications covering air mattresses or air beds and chairs, forty (40) registrations or applications covering air mattresses or air beds and coolers, fifty-seven (57) registrations or applications covering air mattresses or air beds and backpacks, seventy-three (73) registrations or applications covering air mattresses or air beds and umbrellas, and sixty-seven (67) registrations or applications covering air mattresses or air beds and luggage." Brief, unnumbered pages 6-7. The Examining Attorney further states that he made of record a representative sampling. However, as noted previously,

applications have no value in demonstrating that goods are related. Further, it appears from the search summary that the Examining Attorney did not view most of the documents (e.g., only 10 of the 73 applications/registrations for air beds or air mattresses and umbrellas). We cannot say, from this relatively minor number of applications/registrations viewed, that the registrations that were submitted were a representative sample. Second, we note that several of the registrations were based on Section 44 of the Act, rather than on use (see, e.g., Registration No. 2434502), and some of the registrations were obviously for an array of goods for which the mark was either the selling point, or was a house mark. See, for example, Registration No. 2090283 for SPACE CENTER HOUSTON, registered for goods and services in 16 classes, and Registration No. 2754820 (submitted as Application Serial No. 75980145), owned by Lifeguard Licensing Corp. and registered for goods ranging from carpet shampoo to lingerie to trampolines to soda water. Moreover, some of the registrations, although highlighted because they presumably list the goods in the subject application and cited registration, in fact do not. For example, Reg. No. 2694672 has the word "umbrella" highlighted, as well as "air mattresses."

However, the actual item is not umbrellas, but "umbrella stands." Thus, we do not consider the total number listed by the search summary of all of the applications and registrations retrieved by the search to show that the various goods have been registered under a single mark, and we have considered only those registrations which were submitted, and have accorded probative value only to those registrations which are based on use in commerce, and are not in the nature of licensing properties or house marks.

There is another point we must address with respect to the third-party registrations. The cited registration is for goods identified as "air beds." There are relatively few third-party registrations which have this specific item in their identifications. However, there are many third-party registrations which have been made of record that list "air mattresses." The Examining Attorney has also submitted evidence taken from the Internet which indicates that the term "air beds" encompasses air mattresses, or that "air beds" are used as an alternative term for "air mattress."⁵ For example,

⁵ It appears that "air bed" can have many meanings, ranging from an inflatable bed with an inflatable mattress, base, headboard and footboard, see www.bubblefunfurniture.com, to a "real" mattress with quilting which has adjustable firmness to customize one's sleeping area, see www.bsleep.com.

on the WalMart website, under the heading "Air Mattresses," there are listed the "Ozark Elevated Airbed" and the "Ozark Trail Queen-Size Air Mattress with Frame." www.walmart.com. The website for Quality Trading, Inc., www.portablebeds.com, advertises "Inflatable beds and mattresses featuring the next generation of inflatable air beds..." and treats these products as a single category, using the heading "Inflatable Air Beds and Mattresses" and listing, for example, "Serta Air Sleep™ Inflatable Mattresses and Intex Rising Comfort™ Airbed."

In view of this evidence, we consider the third-party registrations which list "air mattresses" probative of relatedness of "air beds" with the various other goods listed in the registrations.

With respect to the goods listed in applicant's class 20, the third-party registrations show that such goods, as well as air mattresses or air beds, may be sold under a single mark. See, for example, Reg. No. 1221753 for "air mattresses and folding chairs"; Reg. No. 2188376 for, inter alia, "air mattresses, folding tables, chairs and benches"; Reg. No. 2138996 for "collapsible tables and chairs for camping, and inflatable air mattress for use when camping"; and Reg. No. 2602031 for, inter alia,

"furniture for camping, namely, folding tables, folding cots, folding chairs and air beds."

In view of the relatedness of the goods demonstrated by the third-party registrations, and the similarity of the marks, we find that confusion is likely with respect to applicant's Class 20 goods. We are not persuaded by applicant's argument that air beds would be bought with care because of their relative expense and because consumers would be concerned about their comfort. As we have already stated, although some air beds are used in the same manner as a regular bed, others are the same as air mattresses and, as shown by the Internet evidence made of record by the Examining Attorney, are advertised as costing as little as \$7.95 for an "Intex Junior Inflatable Air Bed" and \$8.95 for "Intex Manual Inflate Inflatable Air Beds" and "Intex Classic Vinyl Inflatable Air Beds" (www.portablebeds.com). As for applicant's argument that there is no evidence of any actual confusion, applicant's application is based on an asserted intention to use the mark. Since apparently applicant has not yet commenced use of its mark, the absence of actual confusion is not surprising. Even if applicant were to have begun using its mark, there is no information in this record that would allow us to

conclude that there has been a sufficient opportunity for confusion to have occurred, such that we could conclude from the absence of actual confusion that confusion is not likely to occur.

Accordingly, we affirm the refusal of registration with respect to Class 20.

For the Class 18 goods, there is only one third-party registration that covers both air mattresses and goods such as those identified in applicant's application, i.e., Reg. No. 2160167 for a mountain design trademark for, inter alia, umbrellas and backpacks, and air mattresses for use when camping.⁶ A single registration is not sufficient to demonstrate that goods such as backpacks, luggage and beach umbrellas and air beds would emanate from a single source and be sold under a single mark. The Examining Attorney has also submitted, in order to show the relatedness of the goods, excerpts taken from various websites that purportedly show that goods such as the applicant's Class 18 goods and air mattresses are sold by the same Internet "stores." Two

⁶ There are two other third-party registrations which also list such goods, but because they cover a wide range of products and appear to be more in the nature of licensed or house marks (for example, Reg. No. 1451756 for COCA COLA for goods in 10 classes, ~~and~~ ranging from magnetic memo holders to pins made of precious metal to die cast metal vehicles) we do not, as we said above, find them probative of the relatedness of the goods.

of the excerpts, although taken from different websites, www.campingrus.net and <http://shop.store.yahoo.com>, are actually from the same entity, [Camping Station.com](http://CampingStation.com).⁷ This site lists, in a column at the left, a variety of categories. For example, there are "Air Beds & Mattresses," "Back Packs & Bags," "Chairs & Cots," and "Coolers & Canteen's" [sic], as well as, inter alia, "Digital Camera's" [sic], "Furniture," "GPS Systems & Compasses," "Hunting & Paintball Equipment," "Shoe care" and "Zippo Lighters." Featured on one page are "Roof Top Luggage" and a "Chair Pack," while another page features a variety of umbrellas, including "traveler pocket-size umbrella," "telescopic umbrellas," and "golf umbrellas." We note that none of the umbrellas is characterized as a "beach umbrella," the item listed in applicant's application.

There are also excerpts from two other websites, for Dunham's Sports (www.dunhamssports.com) and Modell's (www.modells.com). Each of these excerpts lists categories of goods. The Dunham's Sports list includes 2-Way Radios, Air Beds, Batteries, Daypacks, GPS Instructional Videos, Golf Umbrellas, Secure Digital

⁷ The Yahoo website appears to be merely a link to the [Camping Station.com](http://CampingStation.com) website.

Cards, Umbrellas, Wallets and Water Treatment/Filtration. Modell's also lists a variety of categories, including most of the ones in the Dunham's Sports excerpt. However, the Modell's webpage features only luggage products, specifically a Columbia Windpass wheeled backpack, a Jansport wheeled laptop backpack, an Eagle Creek transit tote, and an Eagle Creek "spare pocket," which appears to be a unisex purse. The Dunham's Sports' excerpt shows a Columbia Windpass wheeled backpack, a Columbia security belt, a Jansport wheeled laptop backpack and a Camp Inn Cordura Cargo Bag.

In other words, none of the website excerpts shows that products such as applicant's and air mattresses or air beds are promoted together. Nor does the fact that the websites list categories for goods such as applicant's and the registrant's demonstrate the degree of relatedness necessary to support a finding of likelihood of confusion. Internet companies sell many different types of items. We have often held that simply because goods are sold under the same roof does not make them related. Internet evidence of the type submitted herein has even less probative value. As opposed to a bricks and mortar store where, because of the proximity of items, customers would encounter one type of good

while shopping for another, customers doing Internet shopping will click directly on the item in which they are interested.

Accordingly, we find that, because the evidence adduced herein does not demonstrate the necessary relatedness between the goods, we reverse the refusal of registration with respect to Class 18.

When we consider air beds and the coolers, lunch boxes and lunch pails in Class 21, we also find that the Office has failed to demonstrate that these goods are sufficiently related to prove that confusion is likely. It should be noted that in the first and final Office actions the Examining Attorney did not even mention a likelihood of confusion with respect to applicant's Class 21 goods. In the first Office action he stated that "the enclosed evidence indicates that the applicant's chairs, umbrellas and backpacks are closely related to the registrant's air beds. Therefore, the proposed mark is likely to cause confusion when used on or in conjunction with the applicant's goods." In the second (and final) Office action, he again stated, "the previously enclosed U.S. registrations show that the applicant's chairs, umbrellas, and backpacks are closely related to the registrant's airbeds." Again, no mention was made of applicant's Class

21 goods. In his appeal brief, the present Examining Attorney has made clear that the refusal of registration is with respect to all three classes. However, his only argument/evidence with respect to the relatedness of the Class 21 goods and air beds is the reference to Registration No. 21361442 [sic], which he states "covers 'air mattresses' and 'coolers.'" Brief, unnumbered p. 7. In fact, Registration No. 2136142 for the mark FARFROMWORKIN is not for goods, but identifies retail and wholesale services and retail and wholesale mail order services for a variety of services, which include, inter alia, air mattresses for use when camping, coolers, and a variety of other goods such as greeting cards, calendars, life preservers, shirts and marine sails. A third-party registration for store services selling a variety of goods is not evidence that such goods are sold under a single mark or emanate from a single source.⁸ Moreover, this registration does not prove that goods of the type listed therein move in the same channels of trade. As the Examining Attorney has recognized, third-party registrations are not evidence of use of the marks shown

⁸ As previously stated, we have not considered third-party registrations in the nature of house marks as evidencing that all the goods listed therein are related.

therein. Thus, a registration for retail store services which lists goods purportedly sold by the store is not evidence that such goods travel in the same channels of trade.

As noted in the Internet evidence discussed above, the websites list coolers as a category for products, in the same way that they list air beds and mattresses and a variety of other items. However, as we have previously stated, such evidence does not demonstrate that the goods are sufficiently related for us to find that confusion is likely.

The Examining Attorney asserts that applicant has offered no evidence to support its contention that the goods of the parties are not related and that they travel in different trade channels. However, it is the Office's burden to prove likelihood of confusion, not the applicant's burden to prove that confusion is not likely. In the case of the Class 18 and Class 21 goods, the Office has not met that burden.

We do not mean to imply we would reach the same result on a different record; it is simply that, on the evidence of record herein, we find that the Office has not demonstrated the requisite relatedness between the

registrant's goods and applicant's goods in Classes 18 and 21.

Decision: The refusal of registration with respect to Class 20 is affirmed. The refusals of registration with respect to the application in Classes 18 and 21 are reversed, and the mark will be published for opposition for the goods in these classes.

Simms, Administrative Trademark Judge, concurring in part and dissenting in part:

While I agree with the majority that confusion is likely if applicant's mark SSI SPORTS were used in connection with foldable beach chairs and directors chairs in Class 20, I also believe that applicant's use of its mark in connection with its Class 18 and 21 goods is also likely to cause confusion with the registered mark SSI for air beds.

In support of his refusal to register applicant's mark for backpacks, day packs, fanny packs, luggage, suitcases and beach umbrellas, in Class 18, the Examining Attorney made of record various third-party registrations in an attempt to show that other companies make and sell goods

similar to applicant's and registrant's.⁹ For example, the Examining Attorney made of record Registration No. 2,160,167, issued May 26, 1998, for a mountain design trademark for various camping-related goods including backpacks and air mattresses. Also of record is Registration No. 2,253,519, issued June 15, 1999, which covers the retail distribution of sporting goods including such as items as air beds and umbrellas. Internet evidence including Web pages of camping and sports retailers also shows that those sites offer for sale such merchandise as backpacks, umbrellas and air beds. See, for example, the Dunham's Sports and Modell's Web pages of record.

With respect to applicant's Class 21 goods, such as coolers, lunch boxes and lunch pails, the Examining Attorney made of record Registration No. 2,136,142, issued

⁹ The evidence in support of the relationship of applicant's Class 20 goods (foldable beach chairs and directors chairs) to registrant's air beds includes such third-party registrations as Registration No. 2,358,443, issued June 13, 2000, for the mark OUTDOOR SPIRIT for folding chairs, air mattresses and air beds as well as other camping and hunting merchandise; Registration No. 1,221,753, issued December 28, 1982, for the mark AMERICAN CAMPER and design for folding chairs and air mattresses and other goods; Registration No. 2,188,376, issued September 8, 1998, for the mark OZARK TRAIL for chairs, air mattresses and various camping-related equipment; Registration No. 2,138,996, issued February 24, 1998, for the mark STANSPORT for chairs for camping and air mattresses as well as other goods; Registration No. 2,328,006, issued March 14, 2000, for the mark LAKE 'N TRAIL for folding camp chairs and air mattresses as well as other camping and fishing-related merchandise; Registration No. 2,602,031, issued July 30, 2002, for the mark NORTHCREST for folding chairs and air beds as well as other camping-related goods.

February 10, 1998, for the mark FARFROMWORKIN for retail and wholesale services and retail and wholesale mail order services including the offering of various camping and outdoors products including coolers and air mattresses as well as clothing. The aforementioned Internet evidence from the camping-related site shows the offering for sale of coolers and air beds or air mattresses.

As the Examining Attorney has argued, and as the majority has agreed, the dominant and origin-indicating portion of applicant's mark SSI SPORTS (SPORTS disclaimed) is identical in sound, appearance and commercial impression to the registered mark SSI. Because applicant's evidence fails to show use (or registration) of this initialism in connection with closely related goods, we must presume that the registered mark is not weak and has a distinctive commercial impression. In fact, the majority has stated that the registered mark is entitled to a "broad scope of protection."

Further, where the marks are nearly identical (SSI and SSI SPORTS), this fact "weighs heavily against applicant." In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). Indeed, the fact that an applicant has selected a nearly identical mark to registrant's "weighs [so] heavily against the applicant

that applicant's proposed use of the mark on "goods... [which] are not competitive or intrinsically related [to registrant's goods]...can [still] lead to the assumption that there is a common source." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688-1689 (Fed. Cir. 1993).

"The greater the similarity in the marks, the lesser the similarity required in the goods or services of the parties to support a finding of likelihood of confusion." 3 J. McCarthy, McCarthy on Trademarks and Unfair Competition, §23:20.1 (4th ed. 2001).

Moreover, goods need not be identical or directly competitive in order for there to be a likelihood of confusion, it being sufficient instead that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See In re Peebles Inc., 23 USPQ2d 1795 (TTAB 1992); Chemical New York Corp. v. Conmar Form Systems Inc., 1 USPQ2d 1139 (TTAB 1986); and In re International Telephone and Telegraph Corporation, 197 USPQ 910 (TTAB 1978). As our primary reviewing Court stated in Recot Inc. v. M.C. Becton, 214 F.3d 1332, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000): "Even if

the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis." The same Court reiterated in the case of Hewlett-Packard Company v. Packard Press, Inc., 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002): "Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services."

There are no restrictions in the identification of goods in registrant's registration and we do not read limitations into that identification of goods. Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration"). See also Schieffelin & Co. v. Molson Companies Ltd., 9 USPQ2d 2069, 2073 (TTAB 1989) ("[M]oreover, since there are no restrictions with respect to channels of trade in either applicant's application or opposer's registrations, we must assume that the respective

products travel in all normal channels of trade for those alcoholic beverages"). Registrant's air beds or air mattresses could well be sold in outdoors or camping or sporting goods stores, the same stores which are likely to sell applicant's backpacks, beach umbrellas, chairs and coolers.

It is also well established that a refusal under Section 2(d) is proper if there is a likelihood of confusion involving any of the goods set forth in the application, and that, where a likelihood of confusion is so found, it is unnecessary to rule with respect to any of the other goods listed in that class of goods. See, e.g., *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); and *Shunk Mfg. Co. v. Tarrant Mfg. Co.*, 318 F.2d 328, 137 USPQ 881, 883 (CCPA 1963). Therefore, for example, if we find a likelihood of confusion with applicant's mark for backpacks, we need not consider applicant's mark for other goods in that class, such as suitcases and luggage.

While applicant has argued that registrant's air beds are found in bedding and furniture stores as well as department stores, applicant has submitted no evidence in support of this contention. And applicant has simply argued that the fact that a company may make items similar to registrant's air beds and applicant's backpacks, folding

chairs, umbrellas and coolers does not mean that those goods are marketed through the same channels of trade. Applicant has offered no evidence that registrant's air beds or air mattresses travel in different channels of trade from applicant's goods. We do have evidence from the Examining Attorney, however, that such goods are made by entities that make other camping-, outdoors- and sports-related merchandise, and are offered for sale online by camping and sports-related companies. In addition, consumers are very likely to encounter these types of goods in camping, outdoors and sporting goods stores. Applicant has also offered no evidence in support of its contention that registrant's air beds are "relatively expensive" and would be purchased by highly sophisticated and careful purchasers. The evidence of record, including depictions and listings of air mattresses and air beds (noted by the majority) tend to indicate, to the contrary, that these goods are not expensive, and applicant has admitted that its own goods are relatively inexpensive. Brief, 3.

It is my belief that an ordinary purchaser, aware of SSI air beds presumptively sold in all normal channels of trade for such goods, including camping, outdoors and sporting goods stores, as well as those sections of department stores, who then encounter applicant's SSI

SPORTS backpacks, umbrellas, foldable beach chairs and coolers, are likely to believe that all of these goods are produced or sponsored by the same entity. The Examining Attorney has shown, in my opinion, that a sufficient relationship exists between registrant's goods and at least these goods of applicant. Furthermore, as noted above, because registrant's air beds and applicant's products are relatively inexpensive, purchasers may not spend a great deal of time in the purchasing decision, a factor which favors registrant in the likelihood of confusion analysis. Of course, if there is any doubt concerning the conclusion of likelihood of confusion, such doubt, in accordance with precedent, must be resolved in favor of the registrant, whose registration has been on the books for almost 28 years. See, e.g., *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988); *In re Martin's Famous Pastry Shoppe, Inc.*, *supra*; and *In re Pneumatiques Caoutchouc Manufacture et Plastiques Kleber-Columbes*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).